Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of Review of the Emergency Alert System	EB Docket No. 04-296

COMMENTS OF CHARTER COMMUNICATIONS, INC.

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These comments are filed in response to the Commission's *Notice of Proposed Rulemaking*[1] in the captioned proceeding on behalf of Charter Communications, Inc. ("Charter"). Although Charter is a major cable operator, and is concerned with the efficient operation of EAS generally, it will focus these comments on EAS obligations applicable to small cable television systems serving rural communities. Charter operates a large number of these small systems.

The current EAS regulatory scheme imposes significant financial burdens on small systems (both in terms of equipment and staffing) that adversely affect their viability, competitiveness, and ability to offer advanced services in smaller communities. However, in many cases the survival of such systems is critical to effective delivery of emergency information to the residents of the communities they serve. These systems, after all, provide local and national news and weather information from broadcast stations and cablecast channels. In order to alleviate excessive EAS burdens on these systems, the Commission should permit

[1] *In the Matter of Review of the Emergency Alert System*, Notice of Proposed Rulemaking, EB Docket No.

alternative technologies that meet the base requirements for delivery of national EAS messages. In addition, the Commission should consider a compliance subsidy and/or a permanent waiver from EAS requirements for the very smallest of cable systems. If nothing else, the Commission should eliminate EAS recordkeeping requirements on small systems.

I. SMALL SYSTEMS ARE OVERBURDENED AND PLACED AT A COMPETITIVE DISADVANTAGE BY THE EAS REQUIREMENTS

Charter operates a number of small cable systems serving fewer than 5,000 subscribers and is concerned with the financial impact that EAS requirements have on these small cable systems.[2] While Charter and other operators have obtained temporary waivers of EAS requirements for many of the small systems they operate, the conditions that required these temporary waivers persist. These systems are often located in rural locations and face extraordinary economic challenges. The per-subscriber costs of maintaining separate headends for such systems are extremely high. The homes-per-mile figure is typically low. Accordingly, a larger per-subscriber investment in cable plant and facilities is required than in cable systems serving more densely populated areas. At the same time, the limited capacity of these systems reduces the revenue-per-subscriber they produce.

Small rural systems are already facing a declining subscriber base that would only further erode with the rate increases necessary to cover significant EAS compliance costs. This is particularly true because of the serious competition these rural systems face from direct broadcast satellite ("DBS") services.[3] Cost estimates from equipment vendors for equipment and

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04-296 (rel. Aug. 12, 2004) ("NPRM").

[2] 3,700 of Charter's 4,100 franchises serve fewer than 5,000 subscribers. Of those 3,700 small systems, 2,800 serve fewer than 1,000 subscribers.

[3] *See e.g.*, Monica Hogan, *DBS Merger Roils Small Ops' World*, Multichannel News, Jan. 21, 2002, at http://www.findariticles.com/cf_0/m3535/3_23/82626449/print.jhtml (noting efforts of DBS providers to drive small cable operators out of business); John M. Higgins, *Rural Ops Face Financial Squeeze*,

installation at small systems still fall within the range of $6,000 to $10,000 per headend, as the Commission estimated in 1997.[4] These high costs persist despite the Commission's expectation of "anticipated equipment cost reductions"[5] and the Commission's decision to allow small systems to install FCC certified-decoder only units, in lieu of encoder/decoder units.[6] For a system serving 100 subscribers, these EAS equipment and installation costs could require a rate increase of several dollars per month (leaving aside all of the other cost increases these systems face), something not practicable in the competitive environment in which small cable systems operate. In such a system, the capital costs associated with EAS compliance could exceed the aggregate of all other capital costs for the year.

II. EAS RULES SHOULD NOT ARBITRARILY RESTRICT TECHNICAL INNOVATIONS IN THE DELIVERY OF PUBLIC WARNINGS

As the Commission states, "The main objective of this NPRM is to seek comment on whether EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances. . . ."[7] The Commission further notes: "We are mindful that the availability of particular delivery systems may differ in rural or

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Broadcasting & Cable, Dec. 18, 2001, at http://www.findarticles.com/cf_0/m0BCA/52_130/68738765/print.jhtml (noting the difficulty rural operators face because of "being hammered by competition from DBS, [which] scar[es] off new investors."); Monica Hogan, *Pagon: Small Ops Will Fold*, Multichannel News, Feb. 15, 2001, at http://www.tvinsite.com/multichannelnews/index.asp?layout=print_page&doc_id=&articleID=CA171928 (noting Pegasus Communications Corp. Chairman and former rural cable operator Mark Pagon's prediction that the "vast majority of rural cable operators serving fewer than 5,000 customers" will go out of business in the next 10 years because of increased competition from DBS, lack of access to capital markets, and insufficient financial returns even if capital was available.)

[4] *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System,* Second Report and Order, 12 FCC Rcd. 15503, ¶ 23 (1997).

[5] *Id.* at ¶ 25.

[6] *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, EB Docket No. 01-66, RM-9156, RM 9215, ¶ 71 (rel. Feb. 26, 2002).

[7] NPRM, at ¶ 20.

insular areas from more urban areas."[8] Charter believes that, especially where small systems are concerned, the need to develop cost-effective innovations in the delivery of emergency alerts is critical. As they now stand, the Commission's equipment requirements are cost prohibitive for many small systems, whether or not those systems are part of an MSO.[9] The Commission, recognizing the significance of these impediments, has granted in excess of 260 requests for temporary waiver for about 2,500 small cable systems.[10] The problem could grow worse if the Commission adds any additional EAS requirements in this proceeding.

Expensive and single-minded solutions will not foster deployment of a ubiquitous national emergency alert system. While uniformity of messaging protocols is necessary to ensure clarity and consistency in these communications, technological restrictions would be counterproductive. Where small cable systems are concerned, the Commission needs to allow for innovation and ingenuity in order that small systems can truly afford to accommodate the need for effective public warning systems. The Commission's Media Security and Reliability Council has, in fact, encouraged technological development in order to improve the methods of delivery to the public.[11] Charter has already advanced to the Commission its "small system satellite delivery" ("SSSD") approach as an option worthy of consideration.[12]

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[8] *Id.* at ¶ 34.

[9] *See* Charter Communications, Inc., *Petition for Temporary Waiver,* In the Matter of Petition for Waiver of the Commission's Emergency Alert Requirements for Cable Television Systems, FO Docket Nos. 91-301, 91-171 (Aug. 23, 2002), at pp. 3-4;

[10] Partnership for Public Warning, *The Emergency Alert System: An Assessment* (February 2004), at p. 19, *available at* <<http://ppw.us/ppw/docs/eas_assessment.pdf>> ("PPW Assessment").

[11] *See* Media Security and Reliability Council, *Comprehensive Best Practices Recommendations,* at p. 14, *available at* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-244391A1.pdf>.

[12] *See* Charter Communications, Inc., *Petition for Declaratory Relief and/or Waiver,* In the Matter of Petition for Declaratory Relief, FO Docket Nos. 91-301, 91-171 (Aug. 14, 2002). Charter ultimately withdrew this petition. At the time, the Commission extended a temporary waiver and noted that it "intend[ed] to initiate a proceeding in the near future to explore certain issues, including the application of EAS to digital and satellite technologies." *In the Matter of Charter Communications, Inc., Petition for Declaratory Relief and/or Waiver of the Commission's Emergency Alert System Requirements for Cable Television Systems*, Order, File No. EB-03-TS-090, at 2 n. 10 (rel. July 21, 2004). Presumably, the

III. THE SSSD OPTION

Charter proposes that cable television operators be allowed to deviate from the system-specific EAS approach of the current regulatory scheme and instead be permitted to use satellite technology to deliver national EAS messages without having to rely on redundant EAS encoder/decoder units at each system to accept and deliver the national EAS message. Reliance on satellite technology is attractive for its speed, reliability, high security levels, and reduced geographical limitations.[13] The satellite technology that Charter proposes to use would permit operators to make all national EAS insertions, while avoiding the costs and other operational expenses associated with installing a full set of EAS equipment at each system. The "decoding" that would normally occur at each headend could be accomplished at the systems through satellite receive equipment used to deliver digital programming services to system subscribers. Charter proposes this approach for small systems that are already receiving their programming feeds via satellite as multichannel packages.

Charter's SSSD system is summarized below:

1. Charter would install an AM/FM antenna at a satellite site (the "uplink site"). From this location, Charter would monitor national EAS tests and alerts that originate from the national EAS center.

2. Charter would install an EAS encoder/decoder unit at the uplink site, and once an EAS test or alert was received and processed, it would be uplinked to the satellite.

3. The encoder/decoder unit would utilize a Motorola DigiCipher II encoding system to process and deliver EAS controlling information to the participating systems. When a national

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Commission was referring to the current proceeding.

[13] PPW Assessment, at p. 29. Indeed, the Partnership for Public Warning concluded that "[t]hese systems with proper coordination could easily be configured to carry EAS traffic." *Id.*

EAS test or alert was activated, the encoder/decoder unit would provide a contact closure to Motorola's Event Trigger System ("ETS") for the DigiCipher II encoding system. This then would generate an encoded hardware-controlled message ("HCM").

4. Charter has installed a digital satellite receiver ("DSR") at each of the participating systems to accept digital programming from the satellite. This same equipment is fully capable of receiving EAS messages. Charter would utilize the DSR to receive and distribute the EAS test or alert that was generated at the uplink site. When the DSR received an EAS message, an HCM would cause an external contact closure at the rear panel of the DSR. The contact closure would force a trunk switch to tune from normal analog programming to the received EAS content. Video and audio content from the DSR unit would then inform subscribers served by the individual participating systems of the national EAS alert. A second contact closure would provide signaling to an Out of Band Data Modulator ("OBDM"). The OBDM would force tune all digital terminals to the one analog channel actually carrying the national EAS content. Accordingly, all viewers would effectively see the EAS message on whatever channel they were viewing.

5. Consistent with Section 11.11(a), once an EAS message is received at the downlink site, each of the participating systems would have the capability of disseminating the message across all programmed channels. In addition, the equipment utilized by Charter is FCC-certified and is capable of encoding and decoding the EAS protocol and providing EAS code transmission requirements and EAS monitoring functions consistent with the Commission's rules.[14]

6. Rather than conducting expensive EAS testing at each of the participating cable systems, EAS testing would occur only at the uplink site. By conducting standard tests at the uplink site, the operator would be able to provide assurance that the EAS message was received and

processed at the input site and transmitted to the satellite network. The satellite network would then necessarily convey the EAS message to each of the participating systems. Because the same satellite transmission would be delivering both the EAS message and video programming, there is no need for duplicative tests at each site. If there were any interruption in the satellite delivery of video programming to any of the participating systems, the operator certainly would be alerted to the problem by a variety of means unrelated to EAS. In addition to monitoring customer calls for any video service disruption, Charter, for example, routinely monitors the satellite transmission at its corporate offices to verify proper operation. Again, a breakdown in the satellite transmission would be identified immediately.

Charter's SSSD approach focuses on the delivery of national EAS messages and ordinarily would not provide for the insertion of state and local EAS messages. Of course, the EAS system historically focused on national messages, and this presumably remains the chief objective. The critical thing now is for the Commission to allow for creative technological solutions that will enable smaller cable systems to remain viable and participate in the national EAS program.

Charter's proposal would enable those smaller systems that are already equipped with satellite digital transmission capability the ability to take advantage of that capability, and the aggregation efficiencies presented by satellite technology, to fulfill EAS responsibilities in an efficient and effective manner.

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[14] 47 C.F.R. §§ 11.51-52.

IV. IN ORDER TO PRESERVE THE VIABILITY OF VERY SMALL CABLE TELEVISION SYSTEMS ADDITIONAL RELIEF IS NEEDED

Charter's SSSD option is not without cost and assumes that a system already has digital reception capabilities. That is not always the case. In fact, Charter has a number of very small systems that are currently covered by a separate waiver granted March 3, 2003.[15] These systems all have fewer than 100 subscribers; some have lost subscribers to the point where they have fewer than 10 subscribers being served by a single headend. Many of the headends are in very isolated locations at a great distant from the nearest local office where the public inspection files are kept, requiring as much as seven hours of travel to visit for purposes of EAS recordkeeping compliance.

Providing cable service to very small, isolated rural communities requires compromises that are simply inconsistent with the current regulatory scheme. The economics of such systems are such that neither the equipment nor the trained personnel required to participate in the EAS system in accordance with the current regulations can be provided without severely threatening the financial viability of the cable system. A public subsidy to defray such costs would be ideal. If the Commission determines that it is inappropriate to grant a permanent waiver or provide a subsidy mechanism, it should at least streamline the regulatory obligations. For example, it should eliminate all record keeping obligations for very small cable systems. It should also forbear from imposing new requirements regarding mandatory carriage of state and local messages that might impose additional compliance costs.

Given the competitive video programming environment, there is a real risk that failing to exempt small systems from these requirements or failing to provide funding assistance will result

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[15] *In the Matter of Charter Communications, Inc., Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 18 FCC Rcd 3098 (2003).

in these systems no longer being financially viable. This could eliminate all financial incentive for the continued operation of these systems.

The elimination of small cable systems in rural areas would be a significantly worse outcome for public safety and emergency response than allowing these cable systems to continue operation without complying with current EAS requirements. In rural areas, many subscribers rely on the clear picture available over the cable system for broadcast stations because they cannot obtain an adequate off-air broadcast signal. Therefore, absent cable service, these individuals would not receive the EAS transmissions provided by broadcasters because of the lack of signal. In addition, they would be deprived of other emergency information carried by cable networks.[16] Moreover, DBS service would not necessarily fill the void. Although DBS has increased the number of markets in which it offers local into local service, its offerings still are restricted to the larger markets, and isolated rural areas may not be able to receive the broadcast stations from the nearest market.[17] Furthermore, DBS providers generally carry local broadcast stations on a separate, additional price tier that DBS customers may decide not to purchase.[18] In contrast, cable systems carry broadcast stations on the basic service tier.[19] The shutting down of operations by cable systems because of the additional financial burdens of EAS compliance on systems already in a tenuous financial position would likely hurt the communication of emergency information to the public.

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[16] *See* 47 C.F.R. § 11.43 (2002) (listing participating cable networks such as CNN and CNN Headline News, Cinemax, Disney Channel, ESPN, HBO, the Movie Channel, MTV, The Nashville Network, Nickelodeon, Showtime, VH-1, and the Weather Channel.

[17] *See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, MB Docket No. 03-172, ¶ 69 (rel. Jan. 28, 2004) (noting that as of December 2003, Echostar offered local into local in 101 markets, DirecTV offered local into local in 64 markets and no local into local service was available in 104 of the 210 television markets) ("Tenth Annual Competition Report.").

[18] *See* 47 U.S.C. § 338; 47 C.F.R. § 76.66.

[19] *See* 47 U.S.C. § 543(b).

V. THE FCC'S EAS REGULATIONS MUST BE TECHNOLOGY NEUTRAL IN THE COMPETITIVE MULTICHANNEL VIDEO MARKETPLACE

There can be no doubt that significant head-to-head competition between cable systems and DBS services exists.[20] Given that nearly 22 % of MVPD customers receive there video services from DBS,[21] there can be no technical or public policy rationale to justify imposing EAS obligations on cable and not on DBS. Because of the current regulatory disparities, Charter strongly supports extending EAS requirements to DBS. It is untenable that cable operators who may be losing customers to DBS should be forced to comply with a regulatory requirement from which its primary competitor is exempt. There is simply no technical or public policy reason why, given the maturity of the DBS industry, this disparity of treatment between MVPDs should persist.

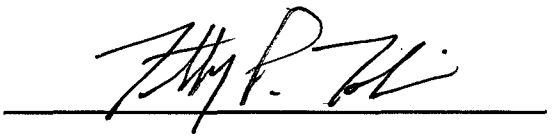
CONCLUSION

For the foregoing reasons, Charter supports proposals that would alleviate the burden of EAS compliance on small cable systems. Possible relief includes exempting small cable systems from EAS participation, reducing compliance obligations (such as record keeping requirements and mandatory insertion of state and local EAS messages), permitting alternative technologies where feasible, and possible subsidization of EAS participation.

[20] *See* Tenth Annual Competition Report at ¶¶ 5-8.
[21] *Id.*

Respectfully submitted,

CHARTER COMMUNICATIONS, INC.



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October 29, 2004

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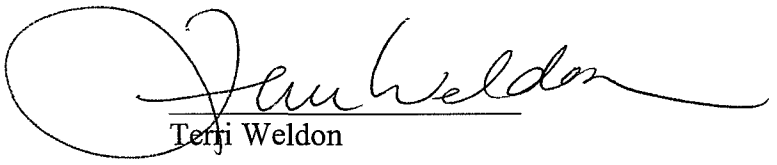
CERTIFICATE OF SERVICE

I, Terri Weldon of Cole, Raywid & Braverman, L.L.P., do hereby certify that on this 29th day of October, 2004, a true and correct copy of Comments of Charter Communications in the Matter of Review of the Emergency Alert System has been sent by electronic filing with the Federal Communications Commission via the internet at http://www.fcc.gov/e-file/ecfs.html.



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